

Judge _____

<input type="checkbox"/> EXPEDITE <input type="checkbox"/> Hearing is set Date: Time: Judge/Calendar: Judge

THURSTON COUNTY SUPERIOR COURT

SEATTLE EVENTS, a Washington Nonprofit Corporation, MULTIVERSE HOLDINGS, LLC, a Washington Limited Liability Company, and UNIVERSAL HOLDINGS, LLC, a Washington Limited Liability Company,

Plaintiffs,

v.

STATE OF WASHINGTON, The WASHINGTON STATE LIQUOR AND CANNABIS BOARD (WSLCB), an agency of the State of Washington, and the members of the WSLCB, JANE RUSHFORD, OLLIE GARRETT, RUSS HAUGE, in their official capacities only, and RICK GARZA, Director of the WSLCB, in his official capacity, only,

Defendants.

NO.

COMPLAINT FOR INJUNCTIVE RELIEF

PLAINTIFFS SEATTLE EVENTS, a Washington Nonprofit Corporation, MULTIVERSE HOLDINGS, LLC and UNIVERSAL HOLDINGS, LLC, through their attorneys, Fred Diamondstone and Douglas Hiatt, allege:

I. INTRODUCTORY STATEMENT

1.1 This lawsuit is brought by Plaintiffs to enjoin the WASHINGTON STATE

1 LIQUOR AND CANNABIS BOARD (WSLCB) from restricting or interfering with issue
2 oriented and educational speech and advocacy activity, not consisting of advertising for
3 business or promoting consumption or use of particular products, at the 28th annual Seattle
4 Hempfest “Protestival,” currently being planned for August 2018 in Seattle.

5 City parks are quintessential public forums that have been recognized as free speech
6 areas under the Washington and federal constitutions, for time immemorial. The Washington
7 Constitution and the U.S. Constitution indisputably protect the right of the people to gather
8 signatures on initiatives and to petition for redress of grievances.

9 As alleged in the Factual Section of this Complaint, Section IV below, despite
10 SEATTLE EVENTS’ efforts to establish a proper dialogue with WSLCB in the fall of 2018,
11 and despite an initial face-to-face meeting with key WSLCB enforcement staff in January
12 2019 and requests for further dialogue, the WSLCB embarked on a campaign on April 9,
13 2019 to actively dissuade licensed marijuana business from participating at Seattle Hempfest
14 by issuing vague and confusing pronouncements that have the effect of intimidating licensed
15 marijuana businesses from participating at Seattle Hempfest and from supporting the
16 Hempfest “Protestival,” through messages that suggest that licensees can and will be cited for
17 violating “advertising” regulations, which can result in fines, penalties and even loss of
18 licenses.

19 Accordingly, Plaintiffs bring this action to enjoin the WSLCB from enforcing
20 statutory restrictions on “advertising” in an unconstitutional manner that would interfere with
21 issue oriented advocacy and public education.

22 II. PARTIES

23 2.1 Plaintiff. SEATTLE EVENTS is a Washington Nonprofit Corporation in
24 good standing, with principal offices and place of business in King County, Washington does
25 business as Seattle Hempfest. SEATTLE EVENTS and its predecessors have produced
26 Seattle Hempfest, an annual “Protestival” free speech event in Seattle, King County

1 Washington for more than 25 years. Seattle Hempfest is the leading “Hempfest” type of
2 event, worldwide.

3 2.2 Plaintiff. MULTIVERSE HOLDINGS, LLC, is a Washington LLC in good
4 standing, with principal offices and place of business in King County, Washington.
5 MULTIVERSE HOLDINGS, LLC does business as WSLCB licensed “I-502” marijuana
6 retailer.

7 2.3 Plaintiff. UNIVERSAL HOLDINGS, LLC, is a Washington LLC in good
8 standing, with principal offices and place of business in King County, Washington.
9 UNIVERSAL HOLDINGS, LLC does business as WSLCB licensed “I-502” marijuana
10 retailer.

11 2.4 Defendant. The STATE OF WASHINGTON authorizes marijuana businesses
12 and has statutes that regulate such business and marijuana advertising, as well as “signs.”

13 2.5 Defendant. The WASHINGTON STATE LIQUOR AND CANNABIS
14 BOARD (WSLCB) is a state agency that administers Washington’s liquor and cannabis laws
15 and regulates “advertising” and “signs” by licensed marijuana businesses, including
16 producers and retailers. “Advertising” is a legislatively and regulatorily undefined term.

17 2.6 Defendant. JANE RUSHFORD is a member of the WSLCB and is sued in
18 her official capacity, only

19 2.7 Defendant. OLLIE GARRETT is a member of the WSLCB and is sued in her
20 official capacity, only

21 2.8 Defendant. RUSS HAUGE is a member of the WSLCB and is sued in his
22 official capacity, only

23 2.9 Defendant. RICK GARZA is the Director of the WSLCB and is sued in his
24 official capacity, only.

25 III. JURISDICTION AND VENUE

26 3.1 Jurisdiction. This court has personal and subject matter jurisdiction. RCW

1 34.05.510 and 66.08.100.

2 3.2 Venue. Venue is properly in Thurston County. RCW 34.05.514 and RCW
3 66.08.100.

4 3.3 Standing. Plaintiffs have standing as they are adversely affected and/or
5 aggrieved by agency action that (a) has prejudiced them or is likely to prejudice them, (b) has
6 been and is being undertaken with conscious awareness that the First Amendment rights and
7 Washington State Const. Art. 1, Sec. 1, 4 and 5 rights of Plaintiffs are being violated, and (c)
8 that can only be addressed by an injunction in Plaintiffs' favor. RCW 34.04.530.

9 3.4 Exhaustion of Remedies. Exhaustion of administrative remedies is not
10 required. RCW 34.05.534 (1) and (2). Further, Plaintiff SEATTLE EVENTS is not subject
11 to any procedures under the APA, since Plaintiff SEATTLE EVENTS is not a WSLCB "I-
12 502" licensee. Further, as alleged below at ¶ 4.3 and ¶ 4.4, because SEATTLE EVENTS has
13 made repeated efforts to work with the WSLCB in an effort to resolve the issue, including by
14 meeting with the WSLCB and the WSLCB's agreement to set up a future meeting with its
15 Attorney General, which it has willfully failed to do for the past three months, this Court
16 should relieve Plaintiffs of any requirement to exhaust any administrative remedies that
17 Defendant WSLCB may identify, in accordance with RCW 34.05.534 (3)(a), (b), or (c).
18 Additionally, the issues raised involve constitutional deprivations that deprive Plaintiffs
19 MULTIVERSE and UNIVERSAL of their free speech rights, for which there is no
20 administrative remedy available, and, therefore, no exhaustion requirement.

21 IV. FACTS

22 4.1 Seattle Hempfest. Seattle Hempfest has occurred for the past 27 years, as a
23 "Protestival" that provides opportunities for activists locally, state-wide, nationally and
24 internationally to exchange information and organize to marijuana law reform, as well as to
25 celebrate the culture associated with hemp products. In recent years, Seattle Hempfest has
26 been attended by approximately 100,000 attendees, annually. Speakers have included

1 Washington State Rep. Roger Goodman, former Seattle Mayor Murray, Seattle City Attorney
2 Pete Holmes. Former Washington State Rep. and current King Co. Council Member Jeanne
3 Kohl-Welles, Former (then-current) Congressman Dana Rohrbacher, former U.S. Senator
4 Mike Gravel, Rick Steves (of Rick Steves' Europe), and hundreds of marijuana law reform
5 advocates from a variety of communities, including lawyers, physicians, the marijuana
6 patient community, the industrial hemp business community, and the licensed marijuana
7 industry here in Washington state. Hempfest was a venue where Initiative 502 was
8 vigorously debated in 2012, on both sides. Hempfest continues to be a venue where reform
9 activists gather to discuss movement goals including

- 10 • De-schedule cannabis completely off the federal schedule/Controlled Substances Act
- 11 • Release non-violent cannabis prisoners
- 12 • Vacation of records of cannabis convictions
- 13 • Legalizing home grows
- 14 • Fair, reasonable zoning for marijuana (I-502) businesses
- 15 • Tax and banking law reform for marijuana businesses (e.g. 26 USC §280E [IRS Code
16 provision, disallowing business deductions]; e.g. HR 1595 [116th Congress, 2019-
17 2020, to create protections for depository institutions that provide financial services to
18 cannabis-related legitimate business and service providers to those businesses])

19 Seattle Hempfest, as a “Protestival,” also includes music at multiple stages, forums, and
20 booths for hundreds of vendors, ranging from jewelers, to glass blowers, to food, and to
21 advocacy organizations, such as the ACLU, League of Women Voters (for voter
22 registration), and NORML (National Organization for Reform of Marijuana Laws). During
23 the event, the City of Seattle and the Port of Seattle historically grant to SEATTLE EVENTS
24 the exclusive use of the Myrtle Edwards Park and Centennial Park, respectively, and
25 SEATTLE EVENTS anticipates that similar permits and licenses will again be issued for
26 August 16, 17 and 18, 2019.

1 4.2 Free Speech Has a Price, for Seattle Events d/b/a Seattle Hempfest.

2 SEATTLE EVENTS obtains permits to produce Seattle Hempfest from local governmental
3 agencies, including Seattle Parks and the City Seattle’s Special Events Committee, the Port
4 of Seattle, the Seattle-King County Department of Public Health, and other agencies. Permit
5 requirements for sanitation and health, park restoration, first aid requirements, and other
6 obligations, including contractual agreements with the Seattle Art Museum, for the protection
7 of the adjacent Olympic Sculpture Park have brought the production costs of Hempfest
8 approximately \$750,000, annually, in the past three years. These costs are partially paid by
9 donations from attendees, and also by contributions from supporters, members and sponsors,
10 many of who are publicly recognized – not unlike supporters and sponsors of other cultural
11 institutions.

12 4.3 Historic Resolution of the “Advertising” Issue with the WSLCB. Prior to

13 2019, SEATTLE EVENTS and the WSLCB reached agreement in 2016 concerning the
14 scope of WSLCB’s legitimate limitations regarding I-502 licensees’ ability to acts as
15 sponsors, as well as their ability to participate at Seattle Hempfest by having booths that
16 disseminated educational and issue-oriented written materials, without advertising products
17 or wares and certainly without selling products, in accordance with (former) RCW
18 69.50.369. *See* Exhibit 1 (letter of Seattle Hempfest attorney Fred Diamondstone, dated
19 April 12, 2016, to Steve Johnson, Deputy Chief, WSLCB Enforcement and Education
20 Division) and Exhibit 2 (Response, dated June 20, 2016, from Justin Nordhorn, Chief,
21 WSLCB Enforcement and Education Division). Seattle Hempfest raised its concerns for a
22 proper balance between WSLCB regulations related to advertising and free speech concerns
23 under the First Amendment, as well as Wash. Const. Art. 1, § 5. As recognized by Chief
24 Nordhorn, in the WSLCB’s 2016 response, WSLCB was “[brought] to look at the differences
25 between advertising and information” and “agree[d] that the use of a business trade name on
26 a booth, or identified as part of a sponsorship level would not constitute a violation of

1 marijuana advertising laws and rules. Therefore, marijuana businesses licensed by the
2 Washington State liquor and Cannabis Board (WSLCB) can use tradename/business names
3 at the event without the need for required marijuana warnings, as required on product
4 advertising.” (Exhibit 2).

5 4.4 2018 and 2019 Outreach from Seattle Events d/b/a Seattle Hempfest to
6 WSLCB. On November 29, 2018, WSLCB enforcement officers Capt. Tim Thompson and
7 Lt. Josh Bolender attended a Seattle Special Events Committee Review (De-Brief) of
8 Hempfest 2018. Following that meeting, Seattle Hempfest representatives and the WSLCB
9 officers conferred and a follow up email was sent to propose and set a meeting to discuss
10 areas of mutual concern. Subsequently, SEATTLE EVENTS’ representatives and counsel
11 met with Deputy Chief Johnson, Capt. Thompson and other WSLCB officials, including
12 Enforcement Advertising Coordinator Matt McCallum, on January 23, 2019 and discussed
13 issues of mutual concern including advertising and the nature of Hempfest as a
14 constitutionally protected 1st Amendment event. (WSLCB Meeting Notes Hempfest 2019,
15 attached as Ex. 3.) The WSLCB Minutes identify “actions to complete.” The first action was
16 to set a meeting 2 to 3 weeks alter with legal representation from both parties to discuss legal
17 issues, including the “legal definition of advertising-vs-informational,” as well as the *Central*
18 *Hudson* test. (See *Central Hudson v. Public Serv. Comm’n. of New York*, 447 U.S. 557
19 (1980). The second action was set a meeting in 1 to 2 months to discuss other issues. The
20 third action was to “continue to meet with Hempfest organizers to provide information and
21 educational resources.” None of those three actions have taken place in the three months
22 since January 23, 2019, despite follow up requests from legal counsel for SEATTLE
23 EVENTS on February 5, 2019 (Exhibit 4) March 18, 2019 (Exhibit 5) and April 4, 2019
24 (Exhibit 6).

25 4.5 WSLCB Campaign in April 2019 to Actively Dissuade Licensed Marijuana
26 Business from Participating at Seattle Hempfest. On April 3, 2019, the WSLCB Executive

1 Management Team participated in a public meeting, at which Enforcement Chief Nordhorn
2 singled out inquiries from Seattle Hempfest and stated that WSLCB planned to advise
3 licensees that they could not have “any sign ... in a public park ... admission to which is not
4 restricted to persons aged twenty-one years or older.” (*Emphasis added*) On April 9, 2019,
5 WSLCB Enforcement Advertising Coordinator developed a Bulletin (No. 19-XX) (attached
6 as Ex. 7 quoting RCW 69.50.369(1), as amended in 2017, as meaning that licensees “cannot
7 directly or indirectly be responsible for the placing of a sign or advertisement for marijuana
8 businesses...” at “these events,” referring to summer events held in city parks, an implicit
9 reference to Seattle Hempfest. The proposed Bulletin also contained the cryptic and
10 confusing message that “This does not prohibit licensees from attending or having
11 noncommercial messaging as long as that message does not reference or otherwise promote
12 the marijuana licensed business or its products.” Subsequently, on April 17, 2019, the
13 Bulletin was actually issued as Bulletin 19-01 (attached as Exhibit 8), with revised language
14 that continues to prohibit any direct or indirect signage for marijuana businesses and that
15 continues to contain cryptic and confusing language that “Licensees may attend these events
16 or have a non-commercial sign as long as the licensee and/or the message does not reference
17 or otherwise promote a marijuana licensed business or its products.”

18 4.6 Bad Faith. Only after Defendant WSLCB issued Administrative Bulletin 19-
19 01 on April 17, 2019, did it subsequently propose on April 24, 2019 to meet with SEATTLE
20 EVENTS, a bad-faith gesture in light of the events alleged in ¶ 4.4 and ¶ 4.5, above.

21 4.7 Impact on Licensees. Plaintiffs MULTIVERSE HOLDINGS, LLC and
22 UNIVERSAL HOLDINGS, LLC are licensed marijuana retailers doing lawful business in
23 accordance with I-502 and RCW 69.50.325 *et seq.* MULTIVERSE and UNIVERSAL intend
24 to support Seattle Hempfest and intend to have booths at Seattle Hempfest and fear that
25 sponsorship, if referenced in Hempfest’s written materials and/or signage at Hempfest
26 stages, will lead to a citation for violation of WAC 314.55.155 and/or RCW 69.50.369 and

1 potential fines, penalties or even license suspension or revocation. Plaintiffs MULTIVERSE
2 and UNIVERSAL are also unable to determine whether any booth that either may set up at
3 Seattle Hempfest, to disseminate information concerning their support of marijuana law
4 reform, or to educate the public about any effects of marijuana use or consumption, or the
5 history of marijuana use, abuse, and criminalization, can bear their business names, logos, or
6 address, or whether their booth can even identify their names and/or logos, without violating
7 WAC 314.55.155 and/or RCW 69.50.369, insofar as “advertising” and “sign” are both
8 undefined terms under RCW Ch. 69.50, as well as WAC Ch. 314.55.

9 4.8 Impact on Seattle Events, d/b/a Seattle Hempfest. Past sponsors have inquired
10 about the status of the WSLCB’s position this year and have advised SEATTLE EVENTS
11 that they are not able to sponsor Seattle Hempfest in light of recent reports of the WSLCB
12 position. SEATTLE EVENTS’ ability to stage this “Protestival” in support of marijuana law
13 reform in August 2019 is at stake, in light of the importance of sponsorships to help meet the
14 costs of the event, as alleged in ¶ 4.2, above.

15 4.9 Excessive Nature of the Ban on Free Speech and Assembly Activity. The
16 statutory and regulatory restrictions of *any* sign in a public park that identifies a licensee,
17 whether directly or indirectly placed, where the park is being exclusively used for this First
18 Amendment and Wash. Const. Art. 1, §1, §4 and §5 protected activity is excessive,
19 overbroad and unreasonable and fails to directly advance government interests in limiting or
20 restricting the use of marijuana by underaged persons, or any other legitimate governmental
21 interests and also is more extensive than necessary to serve any legitimate government
22 interest. Further, the restrictions are not narrowly tailored to serve a substantial or
23 compelling governmental interest.

24 4.10 Violation of Rights. The actions and omissions by Defendant have
25 proximately caused the denial of Plaintiffs’ rights to freedom of speech, freedom to assemble
26 and petition for redress of grievances under the Washington and federal constitutions, U.S.

1 Const. Amend. 1 and Washington Constitution, Article. 1, §§ 1, 4 and 5. Plaintiffs are
2 entitled to declaratory, equitable and injunctive relief.

3 4.11 Necessity for Injunctive and Declaratory Relief. On information and belief,
4 and based on the WSLCB's actions alleged herein, Plaintiffs expect that the WSLCB will
5 continue to take hostile actions in derogation of Plaintiffs' state and federal constitutional
6 rights and to effectively prevent Seattle Events and its supporters and participants from
7 effectively planning, producing, presenting and participating in the 28th Annual Seattle
8 Hempfest "Protestival" in August 2019. Plaintiffs are entitled to declaratory, equitable and
9 injunctive relief.

10 V. CAUSES OF ACTION

11 5.1 Declaratory Relief. Based on the above allegations, this Court should issue
12 declaratory relief pursuant to RCW Ch. 7.24 regarding the 2017 amendment to RCW
13 69.50.369 that amended to restrictions concerning "advertisement" to restrictions on "any
14 sign or other advertisement" to be an unreasonable and/or overbroad restriction when
15 applied to expressive activity related to political speech – as distinguished from advertising
16 to promote a business or product or consumer interest in products - and prevent the WSLCB
17 and its agents from limiting free speech and assembly in the parks, in violation of the First
18 Amendment, through its overbroad and unlawful and "void for vagueness" regulations on
19 signs and advertising.

20 5.2 Injunction; First Amendment. Based on the above allegations, the Court
21 should enjoin Defendant WSLCB and its agents from proceeding to limit free speech and
22 assembly activity in the parks, in violation of the First Amendment, through the guise of
23 enforcement of vague and overbroad regulations and/or statutes restricting expressive activity
24 and conduct, in violation of settled federal constitutional law with respect to political speech,
25 as well as in violation of settled constitutional law with respect to the commercial speech.
26

